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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,235	12/05/2003	Roger Thomas	P-US-PR 1112	9207

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EXAMINER

SELF, SHELLEY M

ART UNIT PAPER NUMBER

3725

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/729,235

Applicant(s)

THOMAS, ROGER

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 7 is/are rejected.
- 7) ☒ Claim(s) 3-6, 8-10, 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on October 14, 2005 has been considered but fails to place the application in condition for allowance.

### ***Terminal Disclaimer***

The application/patent being disclaimed has been improperly identified since the number used to identify the co-pending application being disclaimed is incorrect. The correct number is that number of any and all co-pending or commonly owned patents. For example, the prior Office Action, noted an obvious double patenting rejection in view of co-pending application, 10/729232, therefore the number used to identify the co-pending application being disclaimed should be 10/729232.

### ***Drawings***

The replacement drawings received on September 1, 2005 have been considered. The Examiner hereby approves these drawings.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-10 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

Art Unit: 3725

applicant regards as the invention. With regard to claim 1, line 16 "*the deflector insertable through the exhaust aperture*" is not clear. The claim recites a first and second exhaust aperture, it is not clear which exhaust aperture the deflector is insertable through or if it is either aperture or both.

Similarly, regarding, claim 7, line 2 it is not clear which exhaust aperture, "*the exhaust aperture*" refers to. Clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 as best as can be understood are rejected under 35 U.S.C. 102(e) as being anticipated by Roshilavati Razlan et al. (6,688,349). With regard to claim 1 and 2, as best as can be understood, Razlan discloses a planer comprising: a shoe (fig. 1) the shoe defining an aperture (fig. 1); a body (2) mounted on the shoe (fig. 1); the body (2) defining an exhaust aperture (20) the exhaust aperture defines a first exhaust aperture and a second exhaust aperture, and including a wall, the wall defining a recess (fig. 1); a cutting drum (34) rotatably mounted within the recess (fig. 1), the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor (19) mounted within the body to rotatingly drive the cutting drum (34); a cutting blade mounted on the periphery of the drum and adapted for

Art Unit: 3725

cutting a workpiece when the drum is rotating, the cutting action of the blade causing debris created by the cutting to be ejected from the recess; an airflow generator (col. 3, lines 28-30) for producing airflow within the body; a conduit (fig. 1, 3) defined within the body for directing the airflow; the conduit in communication with the first and second exhaust apertures (20) and connected to recess for entraining and removing debris ejected from the recess; and a removable deflector, the deflector insertable through the exhaust aperture and connected to the conduit for guiding airflow and entrained debris from within the body to outside of the body (col. 3, lines 35-37).

Examiner notes Razlan's exhaust aperture (20) to be formed as a tubular piece, and therefore having a first aperture and a second aperture (first and second end of the tube has openings, i.e., first and second apertures).

***Allowable Subject Matter***

Claims 3-6, 8-10 and 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if any 35 U.S.C. 112 rejection(s) were overcome.

As noted in the previous Office Action, the prior art of record does not disclose or fairly suggest a planer comprising *an expulsion aperture and the conduit is connected to the recess by the expulsion aperture and the cutting action of the blade causes the debris created by the cutting to be ejected from the recess through the expulsion aperture in combination* with the rest of the claimed limitations as set forth in claim 3.

The prior art of record does not disclose or fairly suggest *a flap movable from a first and second position* in combination with the rest of the claimed limitations as set forth in claims 7 and 8.

As noted above, Razlan discloses a planer comprising a shoe, body, cutting drum, motor, cutting blade, airflow generator, conduit and an exhaust aperture defining first and second exhaust apertures (tube form). Razlan discloses that as the rotatable driven cutting drum is operated, blades associated with the drum remove material from a workpiece, hence creating chips/shaving/debris. Razlan discloses that this debris can be exhausted through the exhaust apertures (20). Additionally, Razlan discloses that a deflector may be inserted through the exhaust apertures to facilitate efficient debris removal. Razlan does not disclose *an expulsion aperture and the conduit is connected to the recess by the expulsion aperture and the cutting action of the blade causes the debris created by the cutting to be ejected from the recess through the expulsion aperture* or *a flap movable from a first and second position*. Razlan is silent to any flap. Accordingly, Razlan fails to anticipate or render obvious the claimed invention as set forth in claims 3, 7 and 8.

As noted in the previous Office Action, The prior art of record, Bellow discloses a planer comprising a shoe, body, cutting drum, motor, cutting blade, airflow generator, conduit and deflector. Bellow discloses that as the rotatably driven cutting drum is operated, the blades (40) associated with the drum remove material from a work piece, thereby creating chips or shavings. Bellow discloses that the chips and/or shavings are expelled from the planar through an expulsion aperture (see figure 5, Examiner notes the directional arrows), such that the chips are ultimately expelled via deflector and nozzle (12, 56). Bellows discloses the nozzle of the

Art Unit: 3725

deflector able to be attached to a bag or collection receptacle for the purposes of collecting any debris from the planing operation. Further, Bellow discloses that is it the deflector that is attached to the planar exhaust aperture (figs. 1-3 & 5) via fasteners (66). Bellow does not disclose a *movable flap* or an *additional exhaust aperture* in communication with the conduit and the first exhaust aperture. Further, Bellow fails to disclose or fairly suggest a conduit dividing airflow into a first and second part and the second part passing airflow in a third direction. Accordingly, Bellow fails to anticipate or render obvious the claimed invention as set forth in claim 3, 7 and 8.

Neither the prior art of record nor any combination thereof disclose the claimed invention as set forth in claims 3, 7, and 8. Therefore, claims 3-10, and 12-14 contain allowable subject matter over the prior art of record.

### ***Response to Arguments***

Applicant's arguments have been carefully considered but they are not persuasive. Accordingly a new ground(s) of rejection is applied. The new ground(s) of rejection was necessitated by the amendment. Razlan et al. was made of record in the previous Office Action.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3725

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf  
December 11, 2005

  
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